IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIRST DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION No. 4175 of 2005

Between:

1 Ambati Sataiah S/o Kistaiah
R/o Vemulakonda, Valigonda Mandal, Nalgonda District
2 Ambati Sriramulu S/o Sailu
R/o Vemulakonda, Valigonda Mandal, Nalgonda District
3 Gudelli Lingaiah S/o Mallaiah
R/o Vemulakonda, Valigonda Mandal, Nalgonda District
4 Gudelli Srihari S/o Veeramallu
R/o Vemulakonda, Valigonda Mandal, Nalgonda District
5 Sadula Venkatesam S/o Rajaiah
R/o Vemulakonda, Valigonda Mandal, Nalgonda District
6 Sadula Rangaiah S/o Ramaiah
R/o Vemulakonda, Valigonda Mandal, Nalgonda District
7 Bodraboina Lingaiah S/o Narasimha
R/o Vemulakonda, Valigonda Mandal, Nalgonda District
8 Bodraboina Chandraiah S/o Veeraiah
R/o Vemulakonda, Valigonda Mandal, Nalgonda District
9 Ganaboin Maraiah S/o Naraaiah
R/o Vemulakonda, Valigonda Mandal, Nalgonda District
10 Chaganti Bikshapathi S/o Narasaiah,
R/o Vemulakonda, Valigonda Mandal, Nalgonda District

..... PETITIONERS

AND

1 The Fishermen Cooperative Society,

Vemulakonda Village, Valigonda Mandal,
Nalgonda District
2 The District Collector, Nalgonda District
3 The Commissioner of Fisheriesh, Department of Fisheries,

Nalgonda District, nalgonda
4 Assistant Commissioner of Fisheries, Nalgonda, Nalgonda District
5 Fisheries Development Officer, Nalgonda District, Nalgonda

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ of mandamus to declare the order dated 10-1-2005 issued by the 5th respondent herein as illegal, arbitrary and unjust by issuing appropriate Writ, order or direction and pass such other order or orders, as may be deemed fit and proper.

Counsel for the Petitioner: MR.M.V.S.SURESH KUMAR

Counsel for the Respondent Nos.2 to 5: GP FOR FISHERIES

Counsel for the Respondent No.1: MRS M.VIDYAVATHI

The Court at the admission stage made the following:

ORDER:

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To declare the order dated 10.01.2005, issued by the

5th respondent, as illegal and arbitrary, the present writ petition is filed.

The brief facts that are necessary for disposal of the writ petition may be stated as follows:

The petitioners are said to be members of the 1st respondent Society. When Society admitted some bogus members in the society, the writ petitioners W.P.No.25457/1997 on the file of this Court, and the same disposed of, holding that 26 members were ineligible members of the 1st respondent Society. Thereafter, the impugned proceedings have been issued, authorizing the President of the Society to catch fish from 10.01.2005 to 30.06.2005. Challenging the same, the present writ petition is filed, on the ground that in spite of several orders issued by the 4th respondent, the 1st respondent has not removed the ineligible members. As a matter of fact, the 1st respondent Society, by resolution dated 31.08.2003, has also included eight more persons, who were removed, pursuant to the orders passed by this Court in W.P.No.25457/1997 and batch. There is no jurisdiction on the part of the 5th respondent in issuing permission to the 1st respondent Society, without removing the ineligible members as per the directions of the

4th respondent. Hence the present writ petition.

Respondents 2 to 5 filed a detailed counter affidavit, stating that the Assistant Director of Fisheries is competent authority to confirm the lease of fishing rights. The Fisheries Development Officer has issued fishing rights to the 1st respondent-

Fishermen Cooperative Society. The District Collector has given the lease confirmation order, and in pursuance of the orders of the District Collector, the Fisheries Development Officer has given fishing order to the 1st respondent Society to catch the fish.

A short point that arises for consideration in this writ petition is whether the Order under challenge suffers from any incurable legal infirmities so as to call for interference by this Court.

The learned Counsel for the petitioner contended that unless the ineligible members were removed from the Society, the Society has no right to give permission to the ineligible members to catch fish that is the subject matter of the writ petition. Therefore, he prays to post the writ petition along with other writ petition, which is pending.

On the other hand, the learned Counsel for the 1st respondent contended that for the last 50 years the leasehold rights are being given by the 5th respondent and there is no infirmity in issuing such an order. The learned Government Pleader for respondents 2 to 5 contended that as per the instructions given by the District Collector, dated 02.10.2004, the Fisheries Development Officer has taken necessary instructions, and hence the order under challenge does not suffer from any legal infirmities.

As seen from the writ petition, the only ground taken by the petitioners is that some ineligible members were not removed from the Society, that is the subject matter of the writ petition. That is not the issue in this writ petition, inasmuch as the petitioners challenge the order passed by the Fisheries Development Officer dated 10.01.2005, where under the President, Fishermen Cooperative Society, Vemulakonda village was given right to catch the fish with effect from 10.01.2005 to 30.06.2005. Though no plea has been taken that the 5th respondent has no power to issue such an order, but in the memo filed by the Government, the Deputy Director of Fisheries, Nalgonda, in his proceedings dated 03.10.2004, directed the Assistant Director of Fisheries, Nalgonda and Fisheries Development Officer, Bhongir, to take necessary action since the District Collector, Nalgonda has confirmed the lease rentals in favour of the Fishermen Cooperative Society, Vemulakonda. Therefore, in pursuance of the instructions given by the 2nd respondent to the Deputy Director of

Fisheries, respondents 4 and 5 are competent to issue the consequential order of right to catch the fish. Therefore, the 5th respondent has power to grant the leasehold rights since the competent authority, the District Collector, confirmed the lease rents.

It is not in dispute that as per G.O.Ms.No.776, dated 31.12.1990, the District Collector is the authority for fixing the rentals and he shall take into consideration the productivity of the water source in consultation with the Fisheries Department. Therefore, in pursuance of the instructions given by the District Collector, the Deputy Director of Fisheries authorized respondents 4 and 5 to take necessary action, and accordingly, the consequential order has been passed. The consequential order does not suffer from any incurable legal infirmities so as to call for interference by this Court, and therefore, the writ petition is devoid of merit.

The Writ Petition is, accordingly, dismissed. No order as to costs.

Dated: 21.03.2005'

Dsr

ASSISTANT REGISTRAR

To:

1. The President,
The Fishermen Cooperative Society,
Vemulakonda village, Valigonda Mandal,
Nalgonda District

2. The District Collector,
Nalgonda District

3. The Commissioner of Fisheries,
Department of Fisheries,
Nalgonda District, Nalgonda

4. The Assistant Commissioner of Fisheries,

Nalgonda, Nalgonda District

5. The Fisheries Development Officer,

Nalgaonda District, Nalgonda

6. Two CCs to the Government Pleader

for Fisheries, High Court Buildings,

Hyderabad (OUT)

7. Two CD copies